

unsafe or unsound practices, or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(4) Section 7(a)(1) of the FDIA, pursuant to 12 U.S.C. 1817(a)(1);

(5) Any provision of the International Lending Supervision Act of 1983 (“ILSA”), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(6) Any provision of the International Banking Act of 1978 (“IBA”), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(7) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(8) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”) (12 U.S.C. 3349), or any order or regulation issued thereunder;

(9) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the FDIC, the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(10) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder; and

(11) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g));

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties for violations of the post-employment restrictions under that subsection; and

(h) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

[56 FR 37975, Aug. 9, 1991, as amended at 61 FR 20347, May 6, 1996; 70 FR 69639, Nov. 17, 2005]

### § 308.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party’s counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

### § 308.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Board of Directors* or *Board* means the Board of Directors of the Federal Deposit Insurance Corporation or its designee.

(d) *Decisional employee* means any member of the Federal Deposit Insurance Corporation’s or administrative law judge’s staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Board of Directors or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(e) *Designee* of the Board of Directors means officers or officials of the Federal Deposit Insurance Corporation acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR part 303 of this chapter or by specific resolution of the Board of Directors.

(f) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the FDIC in an adjudicatory proceeding.

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(g) *Executive Secretary* means the Executive Secretary of the Federal Deposit Insurance Corporation or his or her designee.

(h) *FDIC* means the Federal Deposit Insurance Corporation.

(i) *Final order* means an order issued by the FDIC with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(j) *Institution* includes:

(1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHCA (12 U.S.C. 1841 *et seq.*);

(3) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a));

(4) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(5) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(6) Any federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(k) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(l) *Local Rules* means those rules promulgated by the FDIC in those subparts of this part other than subpart A.

(m) *Office of Financial Institution Adjudication* (“OFIA”) means the executive body charged with overseeing the administration of administrative enforcement proceedings of the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve Board (“FRB”), the FDIC, the Office of Thrift Supervision (“OTS”) and the National Credit Union Administration (“NCUA”).

(n) *Party* means the FDIC and any person named as a party in any notice.

(o) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (j) of this section.

(p) *Respondent* means any party other than the FDIC.

(q) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions set forth at § 308.01 and as specified in subparts B through P of this part.

(r) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

### § 308.4 Authority of Board of Directors.

The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

### § 308.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;